

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

September 8, 1998

DIVISION ONE

B118889 People (Not for Publication)
v.
Castro

The judgment is modified to reflect an enhancement of five years pursuant to Penal Code section 12022.5, subdivision (a), and a total term of 26 years. As modified, the judgment is affirmed.

Masterson, J.

We concur: Spencer, P.J.
Ortega, J.

[illegible]

The judgment is affirmed and the matter is remanded for resentencing in accordance with the views expressed in this opinion.

Masterson, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B112602 Stabler et al. (Not for Publication)
 v
 Keel et al.

The judgment (order of dismissal) is affirmed as to defendant Alexander B. Keel. The judgment (order of dismissal) is reversed as to defendant Junior Leroy Hayes. With regard to Hayes, the order sustaining the demurrer without leave to amend is affirmed as to the first five causes of action, and vacated as to the sixth cause of action for constructive trust only. On remand, the trial court shall hold a hearing to inquire whether plaintiffs are capable of alleging the existence of an oral agreement whereby Hayes promised Dorothy to give half of her inheritance to plaintiffs upon Dorothy's death. If the court finds plaintiffs are incapable of so alleging, the court shall re-enter its order sustaining the demurrer to the sixth cause of action without leave to amend. If the court determines that plaintiffs are capable of amending the complaint in the manner described above, the court shall enter an order sustaining the demurrer to the sixth cause of action with leave to amend. In addition, the court will ascertain whether there are creditors, including government low-income benefits providers, who must be joined as necessary parties to this action. The parties are to bear their own costs on appeal.

Ortega, J.

We concur: Spencer, P.J.
 Vogel (Miriam A.), J.

B116623 People (Not for Publication)
 v.
 Barcena

The judgment is reversed and the matter is remanded for a new trial.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
 Dunn, J. (Assigned)

September 8, 1998-Continued

DIVISION ONE (Continued)

B112228 People (Not for Publication)
v.
Barillas

The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

B118483 People (Not for Publication)
v.
Alvarado

The judgment is affirmed.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Dunn, J. (Assigned)

B115234 People (Not for Publication)
v.
Duncan

The judgment is affirmed.

Ortega, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

September 8, 1998-Continued

DIVISION ONE (Continued)

B124310 Large et al. (Not for Publication)
v.
Superior Court, Los Angeles County
(Pomerantz et al., r.p.i.)

The Court:

Therefore, let a peremptory writ issue, commanding respondent superior court to vacate its order of July 16, 1998, denying petitioners' ex parte application setting a motion for summary judgment hearing date, and to issue an order, (1) setting a new trial date; and (2) setting the motion for hearing prior to trial, in Los Angeles Superior Court case No. BC138799. The temporary stay order is hereby terminated. All parties shall bear their own costs.

Spencer, P.J., Ortega, J., Vogel (Miriam A.), J.

DIVISION TWO

B110321 People (Not for Publication)
v.
Blanco

The Court:

The judgment is modified to provide that appellant is given 692 days of presentence credit, consisting of 462 days of presentence actual custody credit and 230 days of presentence conduct credit. As modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment reflecting this modification and to send a certified copy of the amended abstract of judgment to the Department of Corrections.

Boren, P.J., Fukuto, J., Zebrowski, J.

September 8, 1998-Continued

DIVISION THREE

[illegible]

The judgment is affirmed.

Kitching, J.

We concur: Croskey, Acting P.J.
 Goodman, J. (Assigned)

B114860 People (Not for Publication)
v.
Poole

The judgment is affirmed.

Kitching, J.

We concur: Klein, P.J.
Goodman, J. (Assigned)

DIVISION FOUR

B111132 People
v.
Davila

Filed order modifying opinion. Petition for rehearing is denied. (Change in judgment)

September 8, 1998-Continued

DIVISION FIVE

B116464 Maral Darakjian
v.
Patrick C. Potter

(Not for Publication)

The appeal from the judgment entered July 17, 1997 is dismissed as untimely. The judgment entered October 16, 1997, is modified to reflect dismissal of the conspiracy cause of action against Patrick Potter. As modified, this judgment is affirmed. Respondents Patrick Potter, Martin Pulverman, Meyers, Bianchi and MacConnell, and Utica Mutual Insurance Company are awarded their costs on appeal.

Grignon, J.

We concur: Turner, P.J.
 Godoy Perez, J.

B114457 People
v.
Robert Lee Moore

(Not for Publication)

The judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

September 8, 1998-Continued

DIVISION FIVE (Continued)

B117461 People (Not for Publication)
v.
Mike Littlebear Parmenter

The abstract of judgment is modified to reflect presentence credit of 801 days (697 actual, 104 conduct), a \$10,000 restitution fine pursuant to Penal Code section 1202.4, and a \$10,000 restitution fine pursuant to Penal Code section 1202.45. As modified, the judgment is affirmed.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Godoy Perez, J.

B114133 Southern Pacific Transportation Co. (Certified for Publication)
B115670 v.
Mendez Trucking, Inc.

The judgment and order are reversed. Appellant is to recover its costs on appeal.

Armstrong, J.

We concur: Turner, P.J.
 Grignon, J.

DIVISION FIVE (Continued)

B111589 People v. Edward Charles Corbin (Not for Publication)
B118433 In re Edward Charles on Habeas Corpus

The petition for writ of habeas corpus is denied. The findings that appellant suffered prior felony convictions resulting in prison terms pursuant to section 667.5 in A350823A and A384137 are reversed, and the one-year enhancement imposed on A384137 is stricken, reducing the total sentence from 29 years to life to 28 years to life. The enhancements in cases A780970, A738608, and BA053258 are stricken. The abstract of judgment is ordered amended to reflect those orders. The judgment and sentence are in all other respects affirmed.

Armstrong, J.

We concur: Turner, P.J.
 Grignon, J.

B113238 Jose Martinez et al. (Not for Publication)
 v.
 Lazaro Vargas et al.

The trial court's judgment is reversed as to the second cause of action of wrongful death, and this matter is remanded for further proceedings. Respondents to bear costs on appeal.

Armstrong, J.

We concur: Turner, P.J.
 Godoy Perez, J.

DIVISION FIVE (Continued)

B118433 Lila Jorgenson (Not for Publication)

v.

Harvey A. Brisner et al.

The judgment is affirmed.

Armstrong, J.

We concur: Turner, P.J.

Godoy Perez, J.

B117302 Jack Gold

v.

R.H. Wyshak

Filed order denying petition for rehearing.

DIVISION SEVEN

B117466 People (Not for Publication)

v.

Edwards

The sentence previously imposed is vacated, and the cause is remanded for resentencing in accordance with this opinion.

Neal, J.

We concur: Johnson, Acting P.J.

Woods, J.

September 8, 1998-Continued

DIVISION SEVEN (Continued)

B113378 People (Not for Publication)
v.
Villarreal

The judgment is affirmed.

Neal, J.

We concur: Johnson, Acting P.J.
Woods, J.

B110764 Monzello (Not for Publication)
v.
Brandt

The judgment is affirmed. Respondent shall recover sanctions as provided above.

Neal, J.

We concur: Lillie, P.J.
Woods, J.